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Locke and Modern Day Property Conceptions

Locke covers the issue of property rights in Chapter 5 of his book, "*Second Treatises on Civil Government*". Locke's view on property rights are something of an innovation for the time when they were conceived as he understood that "by placing any [human] labour on [uncultivated lands], did [one] thereby acquire a propriety in them."[1] Then with these "labour and materials to work on, [it] necessarily introduces private possessions" which then contributes to why humans enter into a social contract with a government.[2] The entry into a social contract is partly predicated on having a protection of private property. However, the private property that Locke talks about does not fully apply to newer forms and conceptions of property today. Locke's claim that property rights derive from labor are incompatible with and no longer adequately apply in the modern context of digital media, copyright, and intellectual properties.

In the days of Locke, many of the people existing then—that is to say, those who were not enslaved— were self-sufficient, or very close to that. This meant that those people had to work the land for their own attainment of own existence, thus meaning that they worked on the uncultivated land. Even more, much of the world was very agrarian during Locke's time, thus fulfilling this self sufficiency idea. Most of the world's population was not interconnected and globalized in a way that allowed for the vast majority of people to spread out and interact with

[1] John Locke, Two Treatises of Government (1689), , January 20, 2016, accessed April 20, 2019, http://www.gutenberg.org/files/7370/7370-h/7370-h.htm#CHAPTER_V.
[2] Ibid

others. This meant that there were less types of property that existed at the time. Though there were still complications that arose in regards to his conception of property and labor. A simple and common example is the building of a house by contractors. In Locke's original most barebones conception of property, this would mean that the housebuilders own the property due to their labor. However, Locke finds a way around this by explaining that humans invented money to circumvent the normal rules around labor and property. Money is used as a way of compensating someone's labor in lieu of property, and as a means of being "some lasting thing that men might keep without spoiling."[3] It more importantly lead to the advent of a more modern society as commerce arose, and lead to "the opportunity to continue and enlarge" holdings of various property and possessions.[4] Though it should be noted that money had been around for centuries by the time that Locke began his writing, and thus his idea that money comes about is part of his larger thought experiment about property's conception. Knowing this helps to explain how Locke's view of property arose, and thus helps to set the stage for further understanding of property.

To properly understand the ways in which labor and money are different in a modern context, it is important to understand how they have changed since Locke's time. The first thing to note is how money was commonly used during the time of Locke. Many people were farmers during this time, and were self sufficient for most of their goods. Often they would earn money by selling it if a surplus existed, but there were not form of luxury goods for them. Other than farmers, people began to work as general laborers, and thus worked in specified professions as apprentices or in unskilled factories to create things. Jobs then were very focussed on

[3] Ibid
[4] Ibid

manufacturing some form of a good, thus creating a physical property. It is not reasonable, in an economic sense, to hire someone to make their own goods as it diminishes the returns of the head individual or organization. This is why there are wages and exchange of money for labor, thus allowing people to lead more comfortable lives. Items then began to require specialization of labor, or at the very least a basic training. This idea can be seen in full force through the assembly line that was innovated on by Henry Ford in the early twentieth century. The creation of the automobile through this process was not something that the average person could do in their own home as it required many different parts and special combinations of such parts. It does not diminish one's claim to the property of the car by their not being involved directly with the assembly and labor. Such a task essentially calls for an exchange of money for labor. While this is directly in line with Locke's conception that we exchange money for labor and initial property ownership, the larger idea here is that there is no need for this idea anymore. We have reached a point in society where there is too large an alienation between the labor that happens, and the ways in which property is perceived and interacted with that such a connection is no longer viable. Labor today is less and less physically tangible in the type of property created. Many people also do labor today that only creates temporary types of property and exchange, and thus are not directly interacting with an original uncultivated product. Take someone working as a checkout clerk at a national grocery store. They handle the money for the transaction of the food, but don't personally get to keep this money. While the money for food is compensation for a collection of labor that includes original and further cultivation, and eventual transportation to the store. This overall exchange makes the connection of money for labor very indirect. There are other points in the cycle where the exchange is more personal, but in the final transaction it is

too alienated for the association between labor and property to matter within a modern context. Contrast this to a selling at farmers' market where the apple sold is directly picked by the seller or their employees. Another grey area where this applies is through that of digital media and the conception of providing forms of entertainment.

The advent of digital media and property is something that directly comes to odds with Locke's base conception of property, and is at direct odds with it. Consider a live stream on Twitch where someone plays video games live for a few hours, and thus are compensated for their labor of creating entertainment. However, there is no tangible property that one can hold onto long term. There might be a recording of the livestream, but that itself is not something physical that one can own and hold. Even more, this recording has the ability to be endlessly fabricated, thus bringing into question what type of property it is if there are no limits except for that of digital storage. This is a tough question to answer, but one that should be considered as more and more the ideas of property are muddied in the digital age. For many creators, their creations, are the property of bigger companies who distribute or help finance the project. This leads to the idea that the streamer commiting labor might not have a proper claim to the property as they are not engaging labor on an uncultivated site or product. This is foremost evident from the fact that they are working on a platform created by someone else, thus bringing to light that part of the commission goes toward the website where someone is working. Even more, the website holds final say on what is allowed through the legal terms and services. Such regulations bring up even more questions over the labor that one commits, as it can further alienate the creator even more. If there are no local backups of the now deleted streams, then there is a clear infringement of property. Even more, some people who stream and create property on the site are

not directly compensated by the site. Each of these things require scrutiny of Locke's conception of labor and proper compensation. Locke sees money as compensation for labor being done, so should one's work streaming without compensation not be considered labor? Though it could be argued that streaming or digital media creation is analogous to creating paintings or drawings on commission for a paying party. In that regard the artist is helping to realize the vision of the patron who most likely can not otherwise not fashion or create such a product. Most of the digital media today is similar to that concept, but it is often made on commission for another person seeking to make a profit or gain a level of wealth. The content creator never has a final ownership over the product which they so deeply love and cherish. Once more this is verified by the fact that websites where can delete digital property without permission of the original creator. Such an action directly defeats the creator's labor, and it halts their future claims to the property. It is analogous to burning every copy of an author's book even after they had made money from selling it. Another interesting scenario of property is in the music industry where artists are initially compensated for working on the album. Later they are often paid royalties and percentages of sales to compensate them for the time, effort and dedication they put into their labor. Another way they make money is through concerts, but depending on rights that can cost money to perform the songs. However, beyond that there often is no more ownership over the product, thus meaning the final owner, usually a record label, can rake in future profit from the product without a necessary regard to the original artist. This idea also leads to what is the proper understanding of the labor principle in regard to uncultivated situations. One might argue that since there was nothing before it is proper that the artist cultivated something that had be uncultivated prior. Such a claim would reason that the artist then has full rights to the music, but

it is known that they do not. The argument for that is due to where the artist records their music, often with others' equipment, producers, and under contract stipulation. This too is a murky area as Locke did not have the advent of recordings exist during his time. These cases lead to deeper issues of ownership rights and copyright in the United States mostly concerning modern intellectual properties.

An intellectual property (IP) is a "[right] to intangible things—to ideas, as expressed (copyrights),or as embodied in a practical implementation."[5] Intellectual properties were barely a conception in Locke's time due to the nature of copyrights. In many developed nations today, the use of copyright exists to allow for creators and companies to get a fair usage of their intellectual properties for profit before they enter into the public domain, where anyone can create something with the IP. Copyright came to exist in the United Kingdom in 1710 after the passage of the Statue of Anne, which was six years after Locke's death. This form of copyright was one that originally only applied to books stating that authors "shall have the sole right and liberty of printing such book and books for the term of one and twenty years."[6] However, the copyright system is one that has over time come to mean more and more protection for the giant corporations as a means of preventing their IPs from entering into the public domain. The most common and applicable form of copyright in the United States is life of the author plus ninety-five years. This issue is pertinent as the IPs that most companies utilize are not original creations by them, but by their employees who have no long term control over their property. This happens as the author/creator must relinquish direct control over the property "the employer

[5] Stephan Kinsella, Against Intellectual Property (Aurbun, AL: Ludwig Von Mises Institute, 2008), PDF.

[6] "The Statute of Anne; April 10, 1710," The Avalon Project : The Statute of Anne; April 10, 1710, October 25, 2008, , accessed April 20, 2019, http://avalon.law.yale.edu/18th_century/anne_1710.asp.

or other person for whom the work was prepared."[7] This then gives the companies sway over the property, and creates more disconnect between the worker's labor and the property Once more, the compensation aspect of this agreement is often not long term. For example, the Walt Disney Company could make a sequel to *Zootopia*, but they don't have to involve the original creators. It is then an example of this gigant entity profiting off of the prior labor of an individual without compensating them. This shows how Locke's view of property is inconsistent with the modern world that exists today. It was inconceivable for Locke to imagine IPs or the state of copyright over these IPs. Modern contemporary, Stephan Kinsella, argues in his article *Against Intellectual Property* that IPs should not even constitute as property at all as the "move away from the tangible (corporeal) toward the intangible, [makes] matters become fuzzier."[8] This would fit more properly into the conception of Locke's ideas on property as Kinsella doesn't even want to consider IPs. In not considering them it leads to easy solutions for how to view IPs. However, it isn't a reasonable way to view it as all the world has extensive usage of copyright and IPs. Identifying this shows that while an easy answer, it isn't a practical one that is likely to happen.Though some would argue that Locke's conception of property is still very much applicable, if not more, within a modern day setting.

The counter argument in favor of Locke's conceptions of property in a modern context is one that is more sympathetic to companies. It could be said in that context that these massive companies are still compensating the laborer for their property by the initial and potential future employment. Moreso, the argument that the laborers are able to negotiate for proper ownership of the labor is possible. This is even noted by the Office of Copyright stating that copyright only

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[7] United States, Library of Congress, United States Copyright Office, Copyright.gov, September 2012, , accessed April 21, 2019, https://www.copyright.gov/circs/circ09.pdf.
[8] Stephan Kinsella, Against Intellectual Property (Aurbun, AL: Ludwig Von Mises Institute, 2008), PDF.

belongs to employers "unless both [laborers and employer] have signed a written agreement to the contrary."[9] It considers the deeper ideas of the copyright law by placing the responsibility on the individual for failing to capture the rights to their property, or the proper compensation for their labor. Within the digital sphere, there are many takedowns that occur of improperly used or posted content that might not belong to the one attempting to gain from it. That leads to the argument that ownership is properly understood and protected in the digital sphere, but it ignores the fact that many will not abide by this or that there are many ways around it. Even more, property ownership of digital goods is always tenuous as they can not ever be physically owned. This can be seen in the way of books as an author holds the copyright, and the purchaser "does not own the "novel" itself, and is not entitled to make a copy of the novel."[10] This same idea could then be applied to how one might own a song on iTunes. They don't have the right to use the song's original master, or to include it as part of their own album. Obviously this is something completely inconceivable of Locke due to the time of when he lived. Even more, digital ownership is sometimes just a form of long term rental. One clear example of this is buying digital copies of games. Often, when someone buys the game they are actually buying a license to access and use the game so long as the system is up. This once again illustrates the tenuous and weak nature of digital ownership, and the ways in which it ultimately obscures Locke's original viewpoint. In the case of a physical medium, when one buys a movie on DVD they are buying a copy or recreation of it for just private use. They don't have the access to the original copy of the thing, once more bringing up those deeper issues of one's access to properties despite a physical ownership. Though in Locke's time a comparable instance of this

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[9] United States, Library of Congress, United States Copyright Office, Copyright.gov, September 2012, , accessed April 21, 2019, https://www.copyright.gov/circs/circ09.pdf.
[10] Ibid

was that of books. Books too also were not often works of mass market fiction, but rather scholarly texts that were used to spread information amongst people. The most noteworthy fiction available at the time were Shakespeare's plays, yet still the ownership surrounding that is one of a more tenuous nature as the author had died before Locke's was born. All of these ideas about IPs get even more interesting when one considers the deeper idea of Locke's that property is made from uncultivated things. Many IPs are based off of prior works that someone made, and thus adapted to be a certain way. This begs into question whether or not Locke's conception of property would justify these adapted IPs. It seems unlikely that it would justify the existence of these creations.

Reviewing the claims made about Locke's property rights in the modern time, it can be seen that they are not compatible with the times. This is due to the way in which digital property rights behave since there is no tangible thing for one to grasp onto. Instead, the rights are tenuous due to the transient nature of the internet, the ability of endless duplication, and grey areas over ownership and proper claim to rights. This is what causes that initial questioning of the relationship between labor and property. One putting in labor to create something, say a digital drawing, is often only a temporary claim on the product due to the nature of the digital sphere. However, it should not be this way as an original drawing is creation on an uncultivated canvas, the only difference being its existence in a digital sphere. Even more, the ultimate exchange is one of time and money for labor that results in a new thing being created. It is hard to put a final claim on someone owning something permanently due to that relationship. Furthermore, Locke's conception of labor and property doesn't hold up today due to the advent of IPs and copyright existing. These in the naming of themselves suggest a lacking of tangible property to be had, and

difference in claims to who owns a right to a property. It also doesn't line up with Locke as there is a direct disconnect between the laborer/creator and the ultimate form of property made. In most cases, the laborer works under a larger entity, often a corporation, that ultimately holds the rights to the IP and copyright. That ends up alienating the laborer out of the property that they made. Though this is could be countered with a similar argument of a carpenter making a wooden rocking horse for someone. The carpenter doesn't get to keep the rocking horse and is given monetary compensation. However, this is not a tangible argument in relation to IPs since they are not physical properties. Even more the carpenter holds no viable claim to a protection against replication of his work. Even more, copyright law is something tied to a person within the United States, and thus suggests that a director of a film for example would have the ability to make their property with any studio this is often not the case. There are some exceptions, but in most cases despite copyright the final ownership of the IP stays with the company. Such a case explains why it is not comparable for creators of IPs to say they are properly following Locke's conception of property as they lose out on the potential of future gains from their intangible property.

The issue of property and the rights to it are not something that only came about with Locke. However, the way in which he thinks about them were highly unique at the time, and very influential over many thinkers since then. Though now it is time to take a new review of Locke's conceptions of property as modern times have shifted their viability in practice. Locke's incompatibility has arisen mostly due to the alienation from property through digital forms of labor and property creation, and the advent of copyright and intellectual properties. The issue

over property and rights is not one likely to disappear as digital mediums grow, and other legal protections for intellectual properties grow.

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